

FILED
U.S. DISTRICT COURT
MIDDLE GEORGIA

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

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UNITED STATES OF AMERICA :

Plaintiff, :

v. :

AMERICAN CYANAMID; :
AMERISTEEL; ATLANTIC :
STEEL; BLACKMAN UHLER :
CHEMICAL CORP., A DIVISION :
OF SYNALLOY CORP.; :
BRENNTAG MID-SOUTH, INC. :
F/K/A PB&S CHEMICAL CO., INC.; :
COLGATE-PALMOLIVE CO.; :
THE DIAL CORPORATION; :
INTERTRADE HOLDINGS, INC.; :
KOCH SULFUR PRODUCTS LLC; :
LUCENT TECHNOLOGIES; :
OLIN CORPORATION; PVS :
CHEMICAL SOLUTIONS, INC.; :
SANDOZ CHEMICAL CORP. :
n/k/a CLARIANT CORP.; :
SOUTHWIRE COMPANY; and :
WINN-DIXIE STORES, INC. :

Defendants. :

No. 1:02-CV-109-1 (WLS)

FIRST AMENDED COMPLAINT

Plaintiff, United States of America, by the authority of the Attorney General of the United States and through its undersigned attorneys, acting at the request and on behalf of the United States Environmental Protection Agency ("U.S. EPA"), alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Sections 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9607 and 9613(g)(2). The United States seeks the recovery,

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pursuant to CERCLA Section 107, 42 U.S.C. § 9607 of unreimbursed costs of at least \$15,452,136 that have been incurred by the United States in responding to the release and/or threatened release of hazardous substances at and from the Stoller Chemical Company Site ("Site" or "Stoller Chemical Site") in Pelham, Mitchell County, Georgia. The United States also seeks, a declaration, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), that the Defendants are liable for future response costs that may be incurred by the United States in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to CERCLA Sections 107 and 113(b), 42 U.S.C. §§ 9607, 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to CERCLA Section 113(b), 42 U.S.C. § 9613(b), because the claim arose in this district and the threatened and actual releases of hazardous substances occurred, and the Site is located, in this district.

DEFENDANTS

4. Each of the Defendants is a "person" within the meaning of CERCLA Sections 101(21) and 107, 42 U.S.C. §§ 9601(21) and 9607.

5. Each of the Defendants is a person (or is a successor to a person) who arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person or by any other party or entity, at the Site, within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3).

6. Defendant American Cyanamid Co. is a corporation organized and existing under the laws of the State of Maine, which is licensed to do business in the State of Georgia.

7. Defendant AmeriSteel is a corporation organized and existing under the laws of the State of Florida, which is licensed to do business in the State of Georgia.

8. Defendant Atlantic Steel is a corporation organized and existing under the laws of the State of Delaware, which is licensed to do business in the State of Georgia.

9. Defendant Blackman Uhler Chemical Company is a division of Synalloy Corporation. Synalloy Corporation is a corporation organized and existing under the laws of the State of South Carolina, which is licensed to do business in the State of Georgia.

10. Defendant Brenntag Mid-South, Inc. is a corporation organized and existing under the laws of the State of Kentucky, that is qualified to do business in the State of Georgia. Defendant Brenntag Mid-South, Inc. is the successor to the liabilities of PB&S Chemical Co., Inc.

11. Defendant Clariant Corporation, formerly known as Sandoz Chemical Corporation and Sodyeco, Inc., is a corporation organized and existing under the laws of the State of New York, which is licensed to do business in the State of Georgia.

12. Defendant Colgate-Palmolive Company is a corporation organized and existing under the laws of the State of Delaware, which is licensed to do business in the State of Georgia.

13. Defendant The Dial Corporation is a corporation organized and existing under the laws of the State of Delaware, which is licensed to do business in the State of Georgia.

14. Defendant Intertrade Holdings, Inc., formerly owned by Trelleborg Group-Boliden, and formerly known as Boliden Intertrade, Inc., and named as a defendant for and/or in place of Boliden Intertrade, Inc. and Tennessee Chemicals, Inc., is a corporation organized and existing under the laws of the State of Georgia.

15. Defendant Koch Sulfur Products Company LLC is a corporation organized and existing under the laws of the State of Kansas, which is licensed to do business in the State of Georgia.

16. Defendant Lucent Technologies Inc., a successor of Western Electric Company, Inc., and named as a defendant for and/or in place of, Western Electric Company, Inc., AT&T Corp., AT&T Nassau Metals Corporation, Nassau Recycle Corporation, Nassau Smelting & Refining, and Nassau Recycling, is a Delaware Corporation which is licensed to do business in the State of Georgia.

17. Defendant Midcontinent Commodity Exchange, Inc. is a corporation organized and existing under the laws of the State of Missouri, whose principal place of business is located at 8230 Forsyth Blvd., St. Louis, Missouri.

18. Defendant PVS Chemical Solutions, Inc. is a corporation organized and existing under the laws of the State of Michigan.

19. Defendant Olin Corporation is a corporation organized and existing under the laws of the State of Virginia, which is licensed to do business in the State of Georgia.

20. Defendant Southwire Company is a corporation organized and existing under the laws of the State of Delaware, which is licensed to do business in the State of Georgia.

21. Defendant Winn-Dixie Stores, Inc., a corporation organized under the laws of the State of Florida, that is qualified to do business in the State of Georgia.

BACKGROUND

Facility History, Operations and Conditions

22. The Pelham Phosphate Co. plant was constructed in 1911, on approximately 50 acres of land immediately north of Pelham, Georgia. The plant manufactured fertilizers for use in the agricultural industry. Through land purchases, the size of the plant property increased to approximately 500 acres. Chemical Enterprise Corporation bought the plant in 1972 and sold it in 1978 to the Stoller Chemical Company. Stoller operated the plant until 1992, when it abandoned the facility.

23. The two hazardous substances that caused the harm at the Site are sulfuric acid and lead.

24. Early production at the plant involved the burning of pyrite to derive hydrogen sulfide gas, from which sulfuric acid was produced and used in the manufacture of fertilizer. The plant later purchased sulfuric acid from outside sources. The plant used sulfuric acid to dissolve phosphate rock and convert it to phosphoric acid. Once dried, the phosphoric acid was referred to as "super-phosphate." The off-gasses were treated using a three-stage wet venturi scrubber system operating in a high pH environment. The acidic wastewater was collected in a settling pond and recycled to the scrubbers. The super-phosphate was then combined with ammonia (for nitrogen) and potassium chloride in a reaction chamber called an ammoniator. The ammonia and steam gasses from this reaction were also scrubbed using a wet venturi system, and the wastewater was collected and used in the third stage of the acid scrubbers. From there, the mix was transferred to a granulation process, where it was crushed and screened. It was then packaged and shipped to distributors.

25. Emission control dust from electric arc furnaces used in the manufacture of steel was used by Stoller/Pelham as a source of zinc oxide and other micro nutrients.

26. Emission control dust is a listed hazardous substance, KO-61 ("emission control dust/sludge from the primary production of steel in electric furnaces") (see Table at 40 C.F.R. § 302.4).

27. Emission control dust contained varying amounts of lead. The emission control dust was originally stored outside with other bulk ingredients but was moved inside in 1981.

28. Sulfuric acid leaked and spilled all over the Site, which mobilized the lead and drove it laterally and vertically into the ground. The shallow water table maximized the spread of the commingled acid and lead into the subsurface and surface water bodies and caused the contamination to spread for four miles outside of the Site.

29. On information and belief, hazardous substances, including but not limited to sulfuric acid, were disposed of by Defendants American Cyanamid Co.; Blackman Uhler Chemical Corp. a division of Synalloy Corp.; Brenntag Mid-South, Inc. f/k/a PB&S Chemical Co., Inc.; Sandoz Chemical Corp. n/k/a Clariant Corp.; Colgate-Palmolive Co.; The Dial Corporation; Intertrade Holdings Co., Inc.; Koch Sulfur Products, Inc.; Lucent Technologies; Olin Corporation; PVS Chemical Solutions, Inc.; Southwire Company, and Winn-Dixie Stores, Inc. and came to be located at the Site.

30. On information and belief, emission control dust (KO-61), containing lead and other hazardous substances was disposed of by Defendants Atlantic Steel and AmeriSteel, and came to be located at the Site.

31. There are two groundwater aquifers within 40 feet of the ground surface at the Site.

The most shallow aquifer under the Site is contaminated with lead, sulfuric acid, pentachlorophenol, benzene, toluene, vinyl chloride, 1,1,1- trichloroethylene, and other organic compounds. There is a lower aquifer that is used for drinking water: no contamination of drinking water wells from the Stoller Chemical Site has been documented to date. The two aquifers are separated by a continuous 15- to 25-foot layer of clay.

Government Responses

32. A July 13, 1992, EPA site investigation identified the presence of numerous leaking tanks, abandoned vessels; open vats of hazardous waste; and two wastewater pretreatment impounds which were unsecured and actively releasing acidic process wastewater into the environment. The water in these impoundments had a pH of less than 2, as did water in a creek approximately one quarter of a mile downstream of the Site.

33. On July 14, 1992, an EPA On-Scene Coordinator ("OSC") determined that conditions at the Site represented an imminent and substantial threat to human health and the environment. Following that determination, EPA undertook emergency removal actions to eliminate the off-site migration of the low pH wastewater into the adjoining neighborhood via the local creek. EPA's removal actions included: (1) construction of a wastewater treatment plant to adjust the pH of the wastewater; (2) treatment and discharge of more than 4,000,000 gallons of low pH wastewater; (3) soil sampling to identify the nature and extent of the soil contamination (which resulted in a determination that 17 acres around the process area was contaminated with lead); and (4) stockpiling for solidification of a total of 95,000 cubic yards of material contaminated with lead at levels above 500 parts per million.

34. The Georgia Environmental Protection Division ("EPD") agreed to complete the

removal action by installing a cap over the stockpiled soil. EPD eventually determined that it would not be able to complete the project, and EPA constructed the cap.

35. As of the date of the filing of this complaint the costs incurred by the United States pursuant to CERCLA Section 104, 42 U.S.C. § 9604, in "response" to the release or threatened release of hazardous substances at and from the Site total at least \$15,452,136, including the costs of "removal" actions performed or directed by U.S. EPA, as those terms are defined in CERCLA Sections 101(23), 101(24) and 101(25), 42 U.S.C. §§ 9601(23), (24) and (25). The United States will continue to incur response costs at the Site, including administrative and enforcement costs.

36. "Hazardous substances" as defined in CERCLA Section 101(14), 42 U.S.C. § 9601(14), have been "released" within the meaning of CERCLA Section 101(22), 42 U.S.C. § 9601(22), at the Stoller Chemical Site, or there have been threats of such releases into the environment within the meaning of CERCLA Section 101(22), 42 U.S.C. § 9601(22). In addition, "hazardous substances," as defined in CERCLA Section 101(14), 42 U.S.C. § 9601(14), have been released from the Stoller Chemical Site into the ground water of the Site.

37. The Stoller Chemical Site is a "facility" within the meaning of CERCLA Section 101(20)(A), 42 U.S.C. § 9601(20)(A), because it is an area where hazardous substances have been deposited, stored, disposed of, placed, or otherwise come to be located.

38. The response costs incurred by the United States to date at the Stoller Chemical Site were incurred in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

CLAIM FOR RELIEF

(Recovery of Costs Under CERCLA Section 107, 42 U.S.C. § 9607)

39. Paragraphs 1-34, above, are realleged and incorporated herein by reference.

40. CERCLA Section 107(a), 42 U.S.C. § 9607(a), provides, in pertinent part:

* * * *

- (3) any person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances,

* * * *

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for —

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan

41. CERCLA Section 113(g)(2), 42 U.S.C. 9613(g)(2), provides in pertinent part:

In any . . . action [for recovery of costs] . . . , the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

42. Each of the Defendants is a person (or is a successor to a person) who arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person or by any other party or entity, at the Site, within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3).

43. There has been a release of hazardous substances at and from the Stoller Chemical Site.

44. The Defendants are jointly and severally liable under CERCLA Sections 107(a)(3)

and 113(g)(2), 42 U.S.C. §§ 9607(a)(3) and 9613(g)(2), for all unreimbursed costs incurred and to be incurred by the United States in response to the releases and/or threats of releases of hazardous substances at the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that this Court:

A. Enter judgment against each of the Defendants under CERCLA Section 107(a), 42 U.S.C. § 9607(a), finding each Defendant jointly and severally liable for all unreimbursed costs that the United States has incurred in response to releases and/or threatened releases of hazardous substances at and from the Stoller Chemical Site to the date of judgment, plus prejudgment interest; and

B. Enter a declaratory judgment, pursuant to CERCLA Section 113(g)(2), finding each Defendant liable for response costs that will be binding on any subsequent action or actions by the United States to recover further costs incurred by the United States in responding to releases and/or threatened releases of hazardous substances at the Stoller Chemical Site; and

C. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

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